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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,960	03/11/2004	Ziva Listenberg	3083/2	4002

EXAMINER	
FADOK, MARK A	

ART UNIT	PAPER NUMBER
3625	

MAIL DATE	DELIVERY MODE
08/10/2007	PAPER

DR. MARK FRIEDMAN LTD.
C/o Bill Polkinghorn
Discovery Dispatch
9003 Florin Way
Upper Marlboro, MD 20772

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/796,960

Applicant(s)

LISTENBERG, ZIVA

Examiner

Mark Fadok

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-15 and 18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-15 and 18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

The examiner is in receipt of applicant's response to office action mailed 1/8/2007, which was received 6/7/2007. Acknowledgement is made to the amendment to claim 13, leaving claims 13-15 and 18 as pending in the instant application. The examiner has carefully considered applicant's amendment and remarks, but does not find them persuasive. Therefore the previous rejection is restated below, modified as necessitated by amendment.

Examiner's Note

Examiner has cited particular columns and line numbers or figures in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13,14 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Razumov (US 2002/0016742) in view of Sussman (US 20020161658).

In regards to claim 13, Razumov discloses a method for selling consumable items (abstract), comprising the steps of: (a) showing display items to a customer,

wherein each of said display items is not itself available for purchase but visually represents a corresponding one of the consumable items available for purchase (para 0010)

said display items having purchase codes associated respectively with the consumable items (para 0010);

(b) receiving a shopping list and delivery instructions from said customer (para 0015),

said shopping list being created by collecting a plurality of said purchase codes from a plurality of the consumable items (para 0014),

said delivery instructions being indicative of a requested delivery point for delivery of said purchase items (para 0015);

(c) transferring said shopping list and said instructions to a warehouse and packing facility at a location separate from a location at which said display items are

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shown to said customer, said warehouse and packing facility including the consumable items (para 0029); and

(d) packing purchased items according to said shopping list and delivering said purchased items to said requested delivery point (para 0029).

In regards to applicant's feature of delivery to a residential location; Razumov teaches delivery of purchased product by a carrier (para 0003) and delivery to a location associated with information provided by a customer (para 0053), but does not specifically mention that the product is delivered to a residential address (presumably that of the user/shopper). Applicant's own disclosure (para 0018 of PG PUB 20050203810) admits that delivering the product once selected at a retail location was old and well known in the art (Listenberg, para 0018). Further, Sussman teaches scanning products at a retail store and providing the option to have the product delivered instead of picked up at the retail establishment (Sussman, table 3). It would have been obvious to a person having ordinary skill in the art to include in Razumov, delivering the product to the user, because this is a notoriously well known method for customers to save time and provide convenience in the case where the pickup facility is considered to be inconveniently located. The store would be motivated to offer this service to provided the convenience and increase sales to people who are not capable of lugging large amounts of groceries home. Razamov would further be motivated to use a delivery service for people in cities that do not have a vehicle to pick up the groceries thus opening up a new market and increasing sales and revenue.

In regards to claim 14, Razumov teaches collecting is performed using a bar code scanner (para 0033).

In regards to claim 18, Razumov teaches wherein said display items are shown to said customers at each of a plurality of sales locations (0010), and

wherein shopping lists created at each of said plurality of locations are transferred to said warehouse and packing facility for packing and delivery according to said shopping lists created at each of said plurality of sales locations (para 0021).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Razumov in view of Official Notice.

In regards to claim 15, Razumov teaches a management facility for maintaining goods and setting prices, but does not specifically mention receiving a new variety of the consumable items into said warehouse and packing facility; and updating said display items to represent said new variety. The examiner takes Official Notice that updating items available in a store with new items that have been received in stock was old and well known in the art at the time of the invention. It would have been obvious to

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a person having ordinary skill in the art at the time of the invention to include in Razumov receiving a new variety of the consumable items into said warehouse and packing facility; and updating said display items to represent said new variety, because this would permit obsolete products to be replaced by new products thus utilizing the shelf space more efficiently and would also permit the store to replace products where a better negotiated cost had been established.

Response to Arguments

Applicant's arguments with respect to claims 13-15 and 18 have been considered but are moot in view of the new ground(s) of rejection necessitated by amendment.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Mark Fadok** whose telephone number is **571.272.6755**.

The examiner can normally be reached Monday thru Friday 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Jeffrey A. Smith** can be reached on **571.272.6763**.

Any response to this action should be mailed to:

Commissioner for Patents

P.O. Box 1450

Alexandria, Va. 22313-1450

or faxed to:

571-273-8300

[Official communications; including

After Final communications labeled

"Box AF"]

For general questions the receptionist can be reached at

571.272.3600

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Mark Fadok', with a long horizontal flourish extending to the right.

Mark Fadok

Primary Examiner